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Home

For
Individuals and Families

For
Businesses

For
Local Officials

For
Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Directives > Directives - By Decade > (1980-1989) Directives >

SEARCH

Select an area to search

Search

Directive 89-20: Resident Fishermen; Resident Seamen Employed in Foreign or Coastwise Trade, ect.; Withholding

FACTS:

Fred, a resident of Massachusetts, is a merchant seaman on a vessel based in Louisiana and engaged in foreign trade. In January, when Fred receives his W-2 Form for the preceding year, it shows that no amount was withheld from his wages for state tax purposes.

ISSUE

Does Fred, a resident merchant seaman, owe state income taxes to Massachusetts despite the fact that no amounts for such taxes were withheld from his wages?

DISCUSSION

Under 46 U.S.C. § 11108, "[w]ages accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a State or any political subdivision of a State." Id. This provision was intended to prevent multiple withholding from wages of seamen who might be in ports of different states when they receive pay. *Streckfus Steamers, Inc. v. Saint Louis*, 472 S.W.2d 660 (Mo. App.) cert. denied. 409 U.S. 841 (1971).

The provision does not, however, prevent a state from lawfully imposing income taxes on its residents. Since Massachusetts generally imposes an income tax on all income of a Massachusetts resident. Fred's income, whether or not subject to withholding, is subject to Massachusetts income taxation, unless there is some provision exempting it. G.L. c. 62, § 4. There is no such provision, and the income is subject to tax.

Under G.L. c. 62B, § 13, every person who reasonably expects to owe more than \$200 in tax on income not subject to withholding is required to pay over estimated taxes. These payments must be made in four equal installments on April 15, June 15, September 15 of the taxable year and on January 15 of the succeeding year. G.L. c. 62B, § 14(c). However, in the case of a fisherman there is no addition to tax imposed under G.L. c. 62B, § 14(a) if a return is filed and the total tax due is paid by March 1 of the succeeding taxable year. G.L. c. 62B, § 14(h). The estimated taxes paid must total the lesser of:

a) 80% (or, in the case of a fisherman, 66 2/3%) of the tax shown on the return for the taxable year; or

b) 100% of the tax shown on the taxpayer's return for the preceding taxable year.

G.L. c. 62B, § 14(c)(i), (ii). Failure to pay estimated taxes when due or in the amounts required will, except in certain limited circumstances, result in the imposition of an addition to the tax due of 18% of the underpayment for the period of the underpayment. G.L. c. 62B, § 14(a).

NOTE:

If Fred earned income within another jurisdiction (i.e., a state, territory or possession of the United States or the Dominion of Canada or one of its provinces) and paid that jurisdiction an income tax on

it, he may receive a credit for the tax against his Massachusetts income tax, subject to certain restrictions and limitations. G.L. c. 62, § 6(a).

DIRECTIVE

Despite the fact that Fred’s wages are not subject to withholding, all Fred’s wages are subject to Massachusetts income tax because he is a resident of Massachusetts; in addition, because the wages are not subject to withholding, Fred must make estimated tax payments in accordance with the rules set out above.

REFERENCE:

46 U.S.C. § 11108; G.L. c. 62, §§ 4, 6(a); G.L. c. 62B, §§ 13, 14(a), (c), (h); *Streckfus Steamers, Inc. v. Saint Louis*, 472 S.W. 2d 660 (Mo. App). cert. denied. 409 U.S. 841 (1971).

/s/ Stephen W. Kidder
Stephen W. Kidder
Commissioner of Revenue

December 11, 1989

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.